

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of: } MM Docket No. 95-31

Reexamination of the Comparative, }
Standards for Noncommercial }
Educational Applicants }

Association of America's Public Television }
Stations' Motion for Stay of Low Power }
Television Auction (No. 81) }

2nd Further Notice of Proposed Rulemaking }

To: The Commission

Comments of the University of Northern Iowa:

The University of Northern Iowa (University), a chartered State of Iowa university, operates full service stations KUNI, KHKE, KUNY and KRNI and the 5 translator stations serving approximately one-half of the State of Iowa. The University stations are qualified by the Corporation for Public Broadcasting and are National Public Radio and Public Radio International member stations. The University first established its over-the-air broadcasting services in 1962 and it has a long-standing record of public service to citizens in the state of Iowa.

On February 14, 2002, the Commission adopted the "Second Further Notice of Proposed Rulemaking" in the matter of "*Reexamination of the Comparative Standards for Noncommercial Educational Applicants.*" The Second Notice requested additional comments from interested parties on the procedures the Commission should use to license

“non-reserved” channels where both commercial and non-commercial educational entities have an interest.

Of foremost interest is the question of whether NCE entities have sufficient reserve spectrum available in the areas they wish to serve. In this writer’s considerable experience in finding frequencies for the Board of Regent’s State-of-Iowa Statewide Plan, I can report that we have found that all of the reserve frequencies in Iowa’s more populated cities are taken by existing NCE stations or those that are proposed or limited for use by other considerations. Among the applications filed by the University to complete the Statewide Plan are proposals to serve the unserved and underserved communities of Oskaloosa, Ottumwa and Fairfield. In each of these areas the University has been forced to apply for an inferior facility in terms of coverage, because there were no alternative channels available. There are other locations in Iowa with similar problems with regard to channel need and scarcity.

It is unfortunate that the twenty educationally reserved FM channels were assigned to the lower portion of the FM band, immediately adjacent to channel-six TV. In an effort to protect channel-six TV stations from interference, the Commission has placed serious restrictions on the maximum radiated power that NCE FM stations can operate in areas of the US where channel-six TV stations can be received. Channel-six TV stations and their protection zones cover nearly two thirds of the United States causing NCE stations located in such areas to operate as second-class (often vertical polarization only) power-limited stations. Further, the contour-to-contour allocation procedure used to assign NCE FM

channels has resulted in a much larger number of stations per megahertz of bandwidth than in the commercial FM band.¹ NCE FM stations are truly squeezed into every nook and cranny. Consequently, listeners tuning to such stations are more prone to receive interference than those stations allocated to the commercial band. Therefore, we strongly support finding a way for NCE entities to participate in a process that would result in a more equitable distribution of non-commercial and commercial service.

With regard to the Commission's request for comments on the issue of which applicants are exempt from competitive bidding, we believe that it would be wrong to restrict "all" non-commercial applicants from participating in an auction, regardless of any showing they make about using the station for educational purposes. The fact of the matter is that there are already numerous examples of not-for-profit licensees operating commercial stations. Many of these owners use the profits, if any, from the commercial operations to finance their not-for-profit services.² To bar these organizations or other similar groups from participating in future auctions would limit an important avenue of allied entrepreneurial activity that has become all-to-important in these difficult economic times for many successful not-for-profit organizations.

The Balanced Budget Act exempts educational applicants for "stations described in section 397(6) of this Act," from the Commission's competitive bidding authority. This section defines the "noncommercial educational broadcast **station**" and "public broadcast **station**" to mean "a television or radio broadcast **station**" that is "eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast **station** and

which is owned and operated by a public agency or nonprofit private foundation, corporation, or association,” or “is owned and operated by a municipality and which transmits only noncommercial programs for education purposes.” Consequently, we believe the exemption does not extend directly to not-for-profit entities but only to “stations” that will operate under a non-commercial station license. Therefore, we believe that a qualified non-commercial applicant can participate in an auction if the applicant makes no showing that the station will be operated educationally. Since, the above reference section refers to a “station”, we believe that such “stations” acquired by a non-profit agency would be irrevocably defined as “commercial.”

However, focusing the definition on the “station”, as we believe is done section 397(6), and allowing educational applicants to participate in auctions for commercial stations on commercial channels does not resolve the problem we have identified with the scarcity of frequencies reserved for non-commercial use. The only way to accomplish this is to provide the opportunity for an educational entity to petition that a selected commercial channel allocation should be reserved exclusively for non-commercial broadcasting. We believe that the Commission should apply certain criteria such as the lack of availability of non-commercial stations or the lack of diversity of the program content of non-commercial reserved service in the community of license. If there is some NCE service available in the allotment’s service area, we think that the Commission’s suggestion is good; that a channel would be reserved with a public interest showing that there are no other channels that would provide service to at least 50% of the area within the protected service contour of the allotment. While in most situations this would subject the petitioner to the expense of hiring

a technical consultant to prepare such an exhibit, we feel that the ultimate objective of the non-profit's public service mission would make the expenditure worthwhile. We see no compelling reason why this procedure should not be applied to the allotments currently assigned to Broadcast Auction #37 and all future allocations. However, considering the applicant is required to make a showing that there is substantial reason to assign a channel for non-commercial use, we strongly believe that such assignments should be irrevocable. Defining an assignment as "educational" on a permanent basis will prevent a licensee that ultimately wants to operate a commercial channel from making an end-run around the auction process in order to reduce competition for the commercial channel allotment. It would also insure that non-commercial educational service would be available to the area in future years.

With regard to the Commission's proposed option to "Permit NCE entities to acquire licenses for non-reserved channels and frequencies when there is no conflict," based on the large number of mutually exclusive applicant filings for commercial channels that Commission has had to resolve in the past and on the fact that, for purposes of increasing the amount bid for a given channel, the Commission would otherwise encourage multiple applicants for the same channel to participate in an auction, the idea seems remote that the Commission could release a list of available commercial allocations and have only NCE applicants show an interest in any given channel. We think it will be rare, indeed, when commercial applicants fail to show an interest in each and every one of the commercial allotments scheduled for auction. For that reason we do not think that Option #2 is a viable option.

We believe that educational entities should be allowed to request that certain existing allotments listed in auction #37 be defined as non-commercial and thereby be removed from the auction process. We suggest that the Commission open a window for this purpose during which interested educational applicants would file information regarding the need for such a service designation. For an allocation to be defined as 'educational' an applicant would be required to demonstrate that the allocation's service area would meet certain criteria, such as having fewer than three educationally licensed FM stations that serve an area of at least 50 percent of the allocation's coverage area or population and having no comparable options within the reserved spectrum. Once the window closes, the Commission would need to review the proposals for accuracy and then determine if the allotment would qualify for an "educational" designation. We believe that the Commission should take a balanced approach to these designations by assigning a minimum of 20% of the existing allocations for educational use. The fact that these channels may have been originally allocated by commercial applicants should not mitigate a clearly articulated need for new educational service. It is assumed that an applicant who desires to operate the channel commercially will have ample opportunity to file its own considerations during a reply comment period.

Regarding how to settle future mutually exclusive filings between commercial and educational applicants for channels that are not regularly reserved such as for TV and FM translators. We think that this problem can be avoided by the declaring the window openings either for commercial stations or noncommercial education stations but not

simultaneously for both. Once again, the Commission should balance the numbers of window openings to be fair to both applicant types. Further, we believe it would be in the public interest for the FCC to foster educational services such that the first window should be opened for non-commercial applicants. With regard to settling mutually exclusivity between commercial and educational applicants already on file with the Commission, we suggest that 307b process can be used and if that fails a simple drawing could be held to determine the winning applicant. If the conflict is between two educational applicants, we believe the NCE point system should be used.

In conclusion, we applaud the Commission's efforts to fairly consider the educational applicant when conflicts occur with a commercial applicant. Many educational stations operating in the reserved band operate at a considerable disadvantage due to the level of interference because of crowding and protection to channel-six TV stations. We believe an equitable system can be worked out using some of the ideas we have presented herein.

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University of Northern Iowa

¹ Based on figures available from the FCC's web site, as of October 30, 2001 there were 2,234 NCE FM stations as opposed to 6,051 commercial stations. Therefore, the number of stations per one MHz of bandwidth in the NCE reserved band is 558.5 while in the commercial band it is only 378.2.

² An excellent example of this is WTTW, Chicago. The licensee of this public TV station also owns and operates WFMT a classical format commercial radio station.